



नईदिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: 181/MP/2020 alongwith
IA No. 14 of 2021

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 17th of June, 2021

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the PPAs dated 27.04.2018 and Clause 5.7 of the Bidding Guidelines seeking relief under the 'Change in Law' provision viz. the introduction of Safeguard Duty on the import of solar modules after the Bid Deadline (i.e., 05.12.2017) resulting in substantial increase in the cost of project to be borne by the Petitioner and seeking an appropriate mechanism for grant of a suitable adjustment/ compensation to offset commercial impact of such Change in Law event.

AND IN THE MATTER OF:

Clean Solar Power (Bhadla) Pvt. Ltd.
Plot No. 201, First Floor,
Okhla Industrial Estate, Phase-III,
New Delhi – 110020

...Petitioner

VERSUS

1. Solar Energy Corporation of India Limited
Represented Through Chairman & Managing Director,
D-3, First Floor, A wing, District Centre,
Saket, New Delhi - 110017
2. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg,
Lucknow, Uttar Pradesh – 226001

...Respondents

Parties Present: Shri Sajan Poovayya, Sr. Advocate, CSPBPL
Shri Aniket Prasoon, Advocate, CSPBPL
Shri Pratibhanu Singh Kharola, Advocate, CSPBPL
Shri Servesh Kumar Singh, CSPBPL
Shri Sumit Roy, CSPBPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Neha Singh, SECI
Shri Ajay Kumar, SECI
Shri Abhinav Kumar, SECI
Shri Uday Pavan Kumar Kruthiventi, SECI

आदेश/ ORDER

The Petitioner, Clean Solar Power (Bhadla) Pvt. Ltd., is a generating company and a wholly owned subsidiary of Hero Solar Energy Private Limited (HSEPL). The Petitioner owns and operates three Solar Projects of 100 MW each based on Photo Voltaic technology in Bhadla Phase-III Solar Park, Rajasthan for which the Petitioner entered into three Power Purchase Agreements, all dated 27.04.2017. The Petitioner is seeking an appropriate mechanism for grant of a suitable adjustment/ compensation to offset commercial impact of Change in Law event viz. the introduction of Safeguard Duty on the import of solar modules after the bid deadline (i.e. 05.12.2017) resulting in substantial increase in the cost of project.

2. The Respondent No.1, Solar Energy Corporation of India Limited (SECI) has been designated by the Government of India as the nodal agency for implementation of Ministry of New and Renewable Energy (MNRE) scheme for developing grid connected solar power capacity including Phase-II, Batch-IV of the National Solar Mission (NSM) of Government of India (Gol) through VGF mode and plays the role of Intermediary Procurer in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide resolution dated 03.08.2017. SECI is off-taking the entire 500 MW power generated by the Petitioner's Projects for sale to Buying Utilities on a back-to-back basis.
3. The Respondent No. 2, Uttar Pradesh Power Corporation Limited (UPPCL) is the buying utility in the State of Uttar Pradesh and is purchasing power from SECI under the power sale agreement (PSA) dated 28.03.2018.
4. The Petitioner has made the following prayers:

In Petition No. 181/MP/2020

- (i) *Hold and declare that the levy of Safeguard Duty as per the SGD Notification, on the import of solar modules (DC capacity) for Bhadla-I Project, Bhadla-II Project and Bhadla-III Project, is an event of 'Change in Law' under Article 12 of the PPAs dated 27.04.2017 read with Clause 5.7 of the Bidding Guidelines;*
- (ii) *In alternative and without prejudice to prayer (i), hold and declare that the Petitioner is governed by the Change in Law provision in terms of Clause 5.7 of the Bidding Guidelines to the extent the said provision is in deviation with Article 12 of the PPA and consequently, also hold and declare that the levy of Safeguard Duty as per the SGD Notification, on the import of solar modules (DC capacity) for Bhadla-I Project, Bhadla-II Project and Bhadla-III Project, is an event of 'Change in Law' under Clause 5.7 of the Bidding Guidelines;*
- (iii) *Direct the Petitioner to compensate on account of additional expenditure incurred by the Petitioner due to levy of Safeguard Duty by way of adjustment in the tariff in addition to interest/carrying cost from the date of impact till reimbursement by the Respondent No. 1;*
- (iv) *Direct the Petitioner to compensate towards interest on the incremental working capital on account of levy of Safeguard Duty;*

- (v) *In alternative to prayer (iii) above, direct the Respondent No. 1 to pay the Petitioner a lump sum amount as one-time compensation, towards the additional expenditure incurred by the Petitioner in establishing the Solar Projects, due to levy of Safeguard Duty on the import of 'Solar Cells, whether or not assembled in modules or panels' along with the 5% IGST on such amount plus the interest/carrying cost from the date of impact till reimbursement by the Respondent No. 1;*
- (vi) *Consequent to prayer (v), direct Respondent No. 1 to pay within sixty (60) days from the date of raising such claim by the Petitioner, post Commercial Operation Date of the Petitioner's Solar Projects, failing which it will attract late payment surcharge in terms of Article 10.3.3 of the PPAs;*
- (vii) *Issue appropriate directions for securing and realization of the pass-through as claimed by the Petitioner in terms of para (ii) and (v) of the above Prayer clause; and*
- (viii) *grant such order, further relief(s) in the facts and circumstances of the case as this Commission may deem just and equitable in favour of the Petitioner.*

In I.A. No. 14 of 2021

- (i) *Allow the present Application and revive Petition No. 181/MP/2020 filed by the Applicant (i.e., Clean Solar Power (Bhadla) Pvt. Ltd.) under Section 79 of the Electricity Act, 2003 and take up the same for hearing as soon as this Commission resumes hearing;*
- (ii) *Issue ad-interim direction to the Respondent No. 1 (i.e., Solar Energy Corporation of India Limited) to forthwith release the appropriate upfront lumpsum amount and monthly annuity payments to the Applicant (i.e., Clean Solar Power (Bhadla) Pvt. Ltd.) with respect to the Solar Projects in terms of letters dated 22.12.2020, during the pendency of the present Petition and subject to the outcome of Petition No. 536/MP/2020 before the Commission; and*
- (iii) *Pass such other or further order(s) as this Commission may deem fit and proper in the facts of the present case and in the interest of justice and equity.*

Backdrop and Chronological Date of Events

5. **14.03.2016:** The Government of India issued "NSM Guidelines for selection of 5000 MW Grid Connected Solar PV Power Projects under Phase-II Batch IV" (hereinafter referred to as "the NSM Guidelines").

6. **21.06.2017:** SECI issued Request for Selection (RfS) inviting bids for selection of solar power developers for development of cumulative capacity of 500 MW in Bhadla Phase-III Solar Park in the State of Rajasthan.
7. **03.08.2017:** The Ministry of Power issued “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” (hereinafter referred to as “the Bidding Guidelines”).
8. **05.12.2017:** HSEPL submitted three (3) separate bids for grid connected Solar PV projects under NSM Phase-II, Batch-IV Tranche-XI.
9. **21.12.2017:** E-reverse auction was conducted by SECI and HSEPL was declared as a successful bidder for three (3) Solar Projects for generation and sale of power under NSM Phase-II, Batch-IV Tranche-XI.
10. **28.03.2018:** SECI issued separate Letters of Intent in favour of HSEPL for developing the three (3) Solar Projects for generation and sale of power under NSM Phase-II, Batch-IV Tranche-XI. Subsequently, HSEPL formed a Project Company in the name of Clean Solar Power (Bhadla) Pvt. Ltd. (the Petitioner) within the provisions of the RfS for development of Solar Power Project for generation and sale of solar power under NSM Phase-II, Batch-IV Tranche-XI. The Petitioner agreed to set up Solar Power Project based on Photo Voltaic technology of 3 X 100 MW capacity in the Solar Park being developed by M/s Saurya Urja Company of Rajasthan Limited in the State of Rajasthan. SECI executed Power Sale Agreement (PSA) with UPPCL on the same date i.e. 28.03.2018.
11. **27.04.2018:** The Petitioner executed three (3) PPAs with SECI for setting up and sale of power from three (3) solar power projects based on Photo Voltaic technology of 100 MW (AC) each, namely Bhadla-I Project, Bhadla-II Project and Bhada-III Project respectively, in Bhadla Solar Park, Phase-III, Bhadla Village, Phalodi Tehsil, Jodhpur District in the State of Rajasthan (collectively referred to as “the Solar Projects”).

12. As per the PPAs, the scheduled date of commissioning (SCoD) of the Solar Projects was 27.04.2019. However, the Petitioner sought an extension of time and SECI vide its letter dated 14.01.2019 extended SCoD for the Solar Projects to **15.08.2019**. Thereafter, the Petitioner sought another extension of SCoD and SECI accordingly revised SCOD vide letters dated **30.10.2019**.
13. **30.07.2018**: The Department of Revenue, Ministry of Finance, Government of India (MoF, GoI) issued a Notification imposing Safeguard Duty on import of '*Solar Cells whether or not assembled in modules or panels*' (Safeguard Duty/SGD) via Notification No. 01/2018-Customs (SG).
14. **12.03.2020 and 23.03.2020**: MNRE issued a direction to the Respondent (SECI) whereby it stated that since the Commission has already passed detailed clear orders regarding imposition of SGD being a Change in Law event, there is no need to ask developers in similar cases to approach the Commission as the same principle would apply and as such, the central implementing agencies should compensate the developers through annuity mode at rates worked out by them and as per the norms of the Commission.
15. **23.04.2020**: The Petitioner, accordingly, provided the details of the total amount incurred by it on account of SGD and requested SECI to reimburse the said amount.
16. **26.05.2020**: SECI requested the Petitioner to furnish all documents exhibiting clear and one to one correlation between the Solar Projects and supply of goods, duly supported by the invoices raised by the supplier of goods and Auditor's Certificate.
17. **04.06.2020**: The Commission vide its Record of Proceedings observed that the Petitioner and SECI have already initiated the process of undertaking reconciliation of the claims of the Petitioner arising out of Change in Law event as per MNRE's letters dated 12.03.2020 and 23.03.2020 and accordingly, the matter was adjourned *sine die*, with liberty to revive the same based on the outcome of the discussions or settlement reached, if any, amongst the parties.

18. **08.06.2020:** SECI filed a petition before the Commission, being Petition No. 536/MP/2020.
19. **12.06.2020, 16.06.2020 and 22.06.2020:** The Petitioner submitted the requisite documents to SECI for reconciliation of its claim for compensation of Rs. 139,05,19,902/- payable by SECI towards expenditure incurred by the Petitioner due to imposition of SGD.
20. **15.07.2020:** SECI intimated the Petitioner, the methodology of the compensation which will be paid to the Petitioner on annuity basis and also requested the Petitioner to furnish an undertaking to SECI for disbursal of the reconciled amount.
21. **21.08.2020, 15.09.2020 and 30.09.2020:** SECI highlighted observations to the requisite documents submitted by the Petitioner for reconciliation of its claim for additional expenditure on account of Change in Law event.
22. **24.08.2020, 04.10.2020, and 06.10.2020:** The Petitioner replied to various observations raised by SECI.
23. **28.10.2020:** SECI again highlighted certain additional observations regarding the documents submitted by the Petitioner.
24. **10.11.2020:** The Petitioner duly replied to SECI's observations and also provided the requisite undertaking sought by it.
25. **22.12.2020:** SECI confirmed the amounts claimed by the Petitioner (i.e., Rs. 50,45,20,321/- for Bhadla-I, Rs. 49,27,06,488/- for Bhadla-II, and Rs. 39,32,93,093/- for Bhadla-III) towards compensation for Change in Law event post reconciliation and offered to make payment of the said amounts on annuity basis spread over a period of 13 years at the annuity rate of 10.41% per annum, subject to final outcome of Petition No. 536/MP/2020.

26. **24.12.2020:** The Petitioner acknowledged and confirmed its acceptance to SECI's letters dated 22.12.2020, including the *interim* arrangement suggested by SECI therein, and submitted signed copies of the same to SECI for disbursal of payments to the Petitioner.
27. **11.01.2020:** The Petitioner submitted the requisite undertakings to SECI for release of the reconciled amount of compensation.
28. The Petitioner invoked the extraordinary writ jurisdiction of the Hon'ble High Court of Delhi by filing W.P.(C) No. 2363 of 2021, *inter alia* seeking a writ/ order/ direction in the nature of mandamus or any other writ in the nature thereof directing SECI to make payment of the admitted reconciled amounts to the Petitioner in terms of its letters dated 22.12.2020, subject to the outcome of the present Change in Law Petition and Petition No. 536/MP/2020.
29. On 22.02.2021, the Hon'ble High Court of Delhi vide its order in W.P. (C) No. 2363 of 2021 disposed the writ petition by directing the Commission to take up for consideration and dispose the present Petition expeditiously.
30. The Petitioner has submitted that imposition of Safeguard Duty qualifies as 'Change in Law' under the PPAs and entitles the Petitioner to relief under Article 12 of the PPAs. Further, inspite of reconciliation of claims, SECI has not yet released any amount towards compensation on annuity basis.
31. Hence the petition.

Submissions by the Petitioner on following counts

32. SECI agreed to sell the entire capacity of 500 MW to UPPCL. UPPCL executed a PSA dated 28.03.2018 for procurement of 750 MW of solar power or the total capacity of projects selected under the provisions of RFS (for 500 MW of tendered capacity) based on the Bidding Guidelines.

33. In view of the prevailing practice in the Commission for impleading the distribution companies responsible for off-take of power on the basis of PSA entered into with SECI, the Petitioner has made UPPCL, being the ultimate beneficiary of power, a party to the present Petition.
34. As per Article 1.1 of the PPAs, the Petitioner ought to maintain its Capacity Utilisation Factor (CUF) in terms of the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 (in short, “the CERC RE Tariff Regulations”) as amended from time to time. Regulation 53 of the CERC RE Tariff Regulations stipulates maintaining CUF of 19% throughout the tenure of the PPAs. For maintaining such CUF, a generator is required to provide additional DC capacity to take care of losses in inverter, evacuation infrastructure and also degradation factor of solar modules. Moreover, it is also a standard industry practice to install higher capacity of DC solar panel as compared to desired AC output for targeting best technical output. Therefore, the Petitioner is required to have a cumulative DC capacity of 452.23 MW to set up the existing 300 MW cumulative of contracted AC capacity for the Solar Projects. However, by way of the present Petition, it is only seeking compensation for the impact of SGD on 394.11 MW capacity which includes 285.56 MW capacity of solar modules that have already been imported and 108.55 MW capacity which are yet to be imported from China PR and not for the entire 452.23 MW of the cumulative DC capacity since the balance 58.12 MW of DC capacity has been installed with the solar modules procured domestically.
35. In terms of Schedule 6 to the PPAs, the DC module installed capacity may be higher than the contracted AC capacity in order to get the required AC output in MW. Moreover, as mentioned above, it is widely accepted industry practice that projects can be commissioned with DC to AC ratio between 1.2 to 1.6 (where DC capacity is between 1.2 to 1.6 times of the AC capacity). Therefore, in terms of the PPAs, the Petitioner is required to install a total DC capacity of 452.23 MW (i.e., approx. 151 MW (DC) for each Solar Project) as against 300 MW of cumulative contracted AC capacity for optimising the performance of the plant for maximum generation vis-a-vis cost by suitable selection of DC capacity. It is pertinent to

note that in the present case, the above DC capacity of 452.23 MW amounts to 1.50 DC to AC ratio which is within the parameters of industry standards.

36. In order to make installation of 452.23 MW capacity of solar modules, the Petitioner aims to import solar modules of capacity of 394.11 MW only since the balance capacity of 58.12 MW is being procured domestically. In this regard, the Solar Module Import capacity (DC) out of the total 452.23 MW DC capacity, which is to be imported for the Solar Projects is as per the table mentioned below:

Solar Projects	Total Contracted AC capacity (MW)	Total DC capacity (MW)	Total Solar Module Import capacity (DC) (MW)	Total DC capacity met through domestic procurement (MW)
Bhadla-I	100	151.41	144.15	7.26
Bhadla-II	100	152.35	152.35	--
Bhadla-III	100	148.48	97.62	50.86
Total	300	452.23	394.11	58.12

37. While submitting the financial bid, the Petitioner considered the cost incurred on purchase of various goods and services used in setting up the Solar Projects including the taxes/ duties to be paid on such goods and services, whether to be procured domestically or by way of imports in order to arrive at the per unit price of Rs. 2.47/kWh at which the power would be offered in the bid. Major components of setting up the Solar Projects are the Solar Photo Voltaic Modules which constitute more than 60% of the cost of setting up a solar power plant. Post signing of the PPAs, the Petitioner commenced the construction of the Solar Projects as per the PPAs and entered into contracts with companies from China PR for the import of solar modules.
38. Subsequently, vide Notification No. 1/2018 (SG) dated 30.07.2018 (hereinafter referred to as ‘the Safeguard Duty Notification’), the Central Government imposed safeguard duty as per the following rates on the import of “*Solar Cells whether or not assembled in modules or panels*”:
- a) 25% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2018 to 29th July 2019;

- b) 20% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2019 to 29th January 2020;
- c) 15% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th January 2020 to 29th July 2020.
39. After the levy of the Safeguard Duty with effect from 30.07.2018, it is now obligated to bear additional expenditure in relation to import of solar modules towards installation of the DC capacity for the Solar Projects which was not possible to factor in at the time of submission of the bid, i.e., the Bid Deadline of 05.12.2017.
40. In order to meet the mandate of the PPAs and for the purpose of construction of the Solar Projects, the Petitioner entered into five (5) separate Module Supply Agreements dated 13.08.2018, 13.08.2018, 14.08.2018, 08.04.2019 and 02.09.2019 with (i) Wuxi Suntech Power Co. Ltd., (ii) Trina Solar Energy Development Pte Ltd., (iii) Zhongli New Energy (Hong Kong) Investment Ltd., (iv) Hefei JA Solar Technology Co. Ltd., and (v) Wuxi Suntech Power Co. Ltd. respectively, which are companies incorporated under the laws of the People's Republic of China, for purchase of solar modules of approx. DC capacity of 394.11 MW for the Solar Projects. Further, the agreements are valid and binding contracts with the respective companies for import of the requisite solar modules for the Solar Projects. The Petitioner has already acted on the aforementioned contracts, and thus is obligated to fulfil its contractual obligations by importing the quantity of solar modules as agreed therein.
41. Adhering to the terms of the above-mentioned Module Supply Agreements, the Petitioner has already purchased solar modules to the tune of approximately 285.56 MW of DC capacity. The same has suffered the impact of imposition of 25% and 20% SGD impact respectively. The solar modules of balance capacity 108.55 MW are yet to be imported and would, therefore, be subject to levy of Safeguard Duty of 20% as per the Safeguard Duty Notification. It is pertinent to note that the Solar Module Import Capacity in relation to Bhadla-III Project is 97.62 MW and the balance requirement of 50.86 MW capacity of solar modules have been met through domestic procurement. The solar modules for the entire capacity are not imported in one go and are only imported as per the construction requirement

at site for the project. The table depicting the capacity to be imported and under pipeline as against the capacity already imported is as below:

Solar Projects	Total Solar Module Import Capacity (MW) (DC)	Imported Capacity (MW) (with both 25% and 20% SGD impact respectively) (DC)	Capacity under pipeline (MW) (with 20% SGD impact) (DC)
Bhadla-I	144.15	91.93	52.22
Bhadla-II	152.35	96.02	56.33
Bhadla-III	97.62	97.62	0
Total	394.11	285.56	108.55

42. Solar modules of 108.55 MW capacity are pending for delivery as the Solar Projects are at the execution stage in accordance with the construction schedule. SCoD of the Solar Projects as per Article 1.1 of the respective PPAs was 27.04.2019. However, SCoD was extended twice by SECI on the request of Petitioner as per details given under:

Solar Projects	Bid-Deadline	SCOD	Revised SCOD as per SECI letter dated 14.01.2019	Final Revised SCoD as per SECI letter dated 30.10.2019
Bhadla-I	05.12.2017	27.04.2019	15.08.2019	18.02.2020
Bhadla-II	05.12.2017	27.04.2019	15.08.2019	29.02.2020
Bhadla-III	05.12.2017	27.04.2019	15.08.2019	27.10.2019

43. Ministry of Power vide its Notification No. 23/43/2013-R&R dated 27.08.2018 issued directions to the Commission under Section 107 of the Electricity Act for allowing pass-through of any change in domestic duties, levies, cess and taxes imposed by the Central Government, State Governments/Union Territories or by any Government instrumentality, after the award of bids, leading to corresponding changes in the project cost under 'Change in Law'.
44. Levy of Safeguard Duty after the Bid-Deadline of the PPAs resulting in additional unforeseen expenditure attracts Article 12 of the PPAs read with the Change in Law provision of the Bidding Guidelines (i.e., Clause 5.7 thereof), thereby entitling the Petitioner to seek relief under the aforesaid provisions. The additional expenditure incurred by the Petitioner is mandated to be reimbursed by the procurer in furtherance to the terms of Article 12 of the PPAs.

45. The levy of Safeguard Duty after the Bid-Deadline of the PPAs resulting in additional unforeseen expenditure also qualifies within the ambit of Clause 5.7.2(i) and/or (v) of the Bidding Guidelines wherein sub-clause (i) captures the enactment of any new law; and sub-clause (ii) any change in the rates of any taxes which have a direct effect on the project. In view of the provisions of the PPAs and the Bidding Guidelines, the imposition of Safeguard Duty amounts to Change in Law in so far as it amounts to an introduction of a duty, subsequent to the submission of the bid by the Petitioner, which directly affects the project as the cost of the solar modules constitutes a major component of the total project cost.
46. As per the three certificates dated 31.12.2019 issued by the Chartered Accountant in respect of the Solar Projects, levy of the Safeguard Duty has resulted in increase of the cost of the Solar Projects. Implication on account of levy of Safeguard Duty of 25% and 20% respectively in the Solar Projects is approximately INR 110.04 crores which the Petitioner has already incurred towards procurement of 285.56 MW solar modules as on 26.11.2019 and is inclusive of the IGST @5% on such amount. The computation of SGD and IGST paid till 26.11.2019 is as under:

<i>SGD and IGST paid till 26-11-2019 on import of Solar Modules for DC Capacity</i>							
Solar Projects	Imported Capacity (MW)	Invoice Value (in Rs. crore)	SGD Paid @25% (in Rs. crore)	SGD Paid @20% (in Rs. crore)	Total SGD Paid (in Rs. crore)	IGST paid @5% (in Rs. crore)	Total Amount Paid SGD and IGST (in Rs. crore)
Bhadla-I	91.93	147.07	19.76	13.61	33.37	1.67	35.03
Bhadla-II	96.02	155.17	14.74	19.24	33.98	1.70	35.68
Bhadla-III	97.62	155.06	32.22	5.24	37.46	1.87	39.33
Total	285.56	457.30	66.72	38.08	104.80	5.24	110.04

47. On account of the concerns arising around globally adopted practice of installing additional DC capacity, over and above the nameplate/ contracted AC capacity, MNRE issued an Advisory dated 05.11.2019 bearing No. F.No. 283/63/2019- GRID SOLAR which stated that “Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating

(Wp) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity.”

48. Vide its letter dated 05.12.2019, it had requested SECI for confirmation on the relief for imposition of Safeguard Duty after signing the PPAs, in terms of the Change in Law provision and seeking appropriate compensation to offset the increase in costs. However, no response has been received from SECI.
49. It needs to be compensated along with 5% IGST on such amount and carrying costs from the due date till the date of actual realization. The Petitioner has submitted that in terms of Clause 5.7.1 of the Bidding Guidelines, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as may be decided by the Appropriate Commission.
50. As per Article 1.1 of the PPAs, the term ‘Law’ includes all laws in India, any statute, ordinance, regulation, notification, code and rule; and all applicable rules, regulations, orders, notifications or interpretation of the aforesaid statute, ordinance, regulation, notification, code, rule by any Indian Government Instrumentality. The Safeguard Duty Notification is in the nature of a ‘notification’ and was promulgated by the MoF, GoI which is an Indian Government Instrumentality, in terms of the definition provided under the PPAs. As such, the Safeguard Duty Notification is squarely covered under the ambit of said definition of ‘Laws’ under the PPAs.
51. The term ‘Law’ has been defined in terms of Article 12.1.1 of the PPAs and Clause 5.7 of the Bidding Guidelines. Further, ‘Change in Law’ provision provides for occurrence of any of the events enumerated therein after the Bid-Deadline. In this regard, in terms of the first

bullet of Article 12.1.1, the enactment, coming into effect or promulgation of any new law in India are covered as events of Change in Law.

52. Fifth bullet of Article 12.1.1 of the PPAs state that any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project after the date of submission of Bid shall be a trigger for an event of Change in Law.
53. 'Change in Law' Clause in the PPAs provides for 'Relief for Change in Law' in terms of Article 12.2, which ensures that a party to the PPAs which has undergone additional expenditures on account of any Change in Law event, for instance, promulgation of the Safeguard Duty Notification in the present case, is adequately compensated for the costs incurred by such party.
54. The petitioner is entitled to a relief either in the form of a lump sum payment as a one-time compensation or in the form of tariff adjustment towards the import of 394.11 MW capacity (DC) solar modules as against the cumulative DC capacity of 452.23 MW which is required to be installed for the 300 MW of contracted AC capacity under the Solar Projects since the balance DC capacity is being procured domestically.
55. Article 12.2.2 of the PPAs along with Clause 5.7 of the Bidding Guidelines, besides providing for the power to acknowledge Change in Law, also provides the power to grant relief. The Commission's power extends beyond grant of one-time compensation/ adjustment of tariff and is inclusive of the power to grant carrying cost so that the relief is an effective relief. If carrying cost is denied, then mere compensation after lapse of time will have diminished value and will severely affect the economic position of the Petitioner.
56. Although there is no concept of 'return on equity' and 'interest on working capital' in a competitively bid tariff, the increase in costs due to change in law events have an indirect bearing on the two. These components are integral to the all-inclusive tariff bid. At the time of the submissions of bid(s), the Petitioner has factored in 'interest on working capital' and return on equity based on the taxes and duties prevalent at the time of bid. With the increase in the tax costs due to the change in law events, the working capital requirement, and

consequently, the interest on working capital have also increased as compared to requirement and rate prevalent at the time of bid. Thus, the Petitioner is entitled to interest on incremental working capital at normative interest rate to put the Petitioner to the same economic position as if Change in Law has not occurred.

57. The Petitioner has submitted that although the PPAs and Power Sales Agreement dated 28.03.2018 between SECI and UPPCL have been executed on a back-to-back basis, the payment obligation on SECI under the PPAs is independent and foremost. The aspect of SECI's independent obligation to make payment, has already been upheld by the Commission in various orders namely, order dated 28.01.2020 in Petition No. 67/MP/2019, order dated 03.02.2020 in Petition No. 356/MP/2019, and order dated 21.02.2021 in Petition No. 211/MP/2019.

Submission by the Respondent No.1 (SECI)

58. PPAs with the Petitioner are executed entirely on back-to-back basis based on the Power Sale Agreement dated 28.03.2018 (hereinafter 'PSA') entered into between SECI and the Respondent No.2, Uttar Pradesh Power Corporation Limited (UPPCL) for sale of the power procured under the PPAs dated 27.04.2018.
59. The impact of Change in Law is to be considered for Safeguard Duty on the solar modules, plant and equipment imported for the Solar Projects of the Petitioner. The safeguard duty paid is to be included in the capital cost and amounts to additional capitalization. The additional capitalization has to be served over life of the PPA, as in the case of servicing the capital cost on plant, machinery etc. SECI has also written letters dated 08.02.2021 and 09.03.2021 to UPPCL, inter-alia, requesting UPPCL to make payment of the reconciled Safeguard Duty claims of the Petitioner. UPPCL is yet to respond to the reconciliation given by SECI to UPPCL vide its letter dated 22.12.2020.
60. SECI has submitted that the Commission vide its order dated 03.02.2020 in Petition No.356/MP/2018 and Petition No.51/MP/2019 in the matter of *Azure Power India Limited – v- Solar Energy Corporation of India Limited* and connected Petition, inter-alia, decided on

the payment in respect of the claim of Safeguard Duty. The amount as evaluated and reconciled by SECI and to the extent confirmed by UPPCL or the amount duly adjudicated by the Commission in regard to safeguard duty claims of the Petitioner is payable 'within sixty days of the date of the Order or from the date of submission of claims by the Petitioner whichever is later'. SECI is also entitled to claim the receipt of the said amount from UPPCL on back-to-back basis.

61. SECI has pointed out that the aspect of cut-off date with respect to Safeguard Duty has been decided by the Commission in the order dated 04.10.2019 passed in Petition No. 14/MP/2019 and connected Petitions in the matter of *ReNew Solar Power Private Limited –v- Solar Energy Corporation of India Limited and Others*. In view of the above, it is requested that the Commission may clarify the cut-off date with regard to liability of payment on account of impact of safeguard duty on procurement of modules, panels for the present matter.
62. SECI has submitted that considering the substantial amount payable by SECI to the Petitioner on account of Safeguard Duty, it sought issuance of effective directions by the Commission to UPPCL (the procurer of the power under the PSA dated 28.03.2018), to make payment towards the evaluated claims of the Safeguard Duty payable by SECI to the Petitioner, on a back to back basis under the PSA in a time bound manner.

Analysis & Decision

63. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records.
64. The brief facts of the petition are that SECI issued RfS inviting bids for selection of solar power developers for development of cumulative capacity of 500 MW in Bhadla Phase-III Solar Park in the State of Rajasthan. HSEPL (parent company of the Petitioner) submitted three separate bids and was declared as a successful bidder. Subsequently, HSEPL formed a Project Company in the name of Clean Solar Power (Bhadla) Pvt. Ltd. (the Petitioner) within the provisions of the RfS for development of the Solar Projects, generation and sale of solar power. The Petitioner agreed to set up the Solar Projects based on Photo Voltaic technology

of 3 X 100 MW capacity in the Solar Park being developed by M/s Saurya Urja Company of Rajasthan Limited in the State of Rajasthan. SECI executed Power Sales Agreement (PSA) with UPPCL on 28.03.2018. On 27.04.2018, the Petitioner executed three PPAs with SECI for the Solar Projects. As per the PPAs, SCoD of the Solar Projects was 27.04.2019. However, the Petitioner sought an extension of time, twice, and SECI vide its letter dated 14.01.2019 and 30.10.2019 extended SCoD till 18.02.2020 for Bhadla-I, 29.02.2020 for Bhadla-II and 27.10.2019 for Bhadla-III. On 30.07.2018, the Department of Revenue, Ministry of Finance, Government of India issued a Notification imposing Safeguard Duty on import of '*Solar Cells whether or not assembled in modules or panels*' via notification number No. 01/2018-Customs (SG).

65. The Petitioner has submitted that on 12.03.2020 and 23.03.2020, MNRE issued a direction whereby it stated that since the Commission has already passed detailed clear orders regarding imposition of SGD being a Change in Law event, there is no need to ask developers in similar cases to approach the Commission as the same principle would apply and as such, the central implementing agencies should compensate the developers through annuity mode at rates worked out by them and as per the norms of the Commission. Accordingly, it submitted the requisite documents to SECI for reconciliation of its claim for compensation of Rs. 139,05,19,902/- payable by SECI towards expenditure incurred by the Petitioner due to imposition of SGD. Meanwhile, on 08.06.2020, SECI filed a petition before the Commission, being Petition No. 536/MP/2020. On 22.12.2020, SECI confirmed the amounts claimed by the Petitioner (i.e., Rs. 50,45,20,321/- for Bhadla-I, Rs. 49,27,06,488/- for Bhadla-II, and Rs. 39,32,93,093/- for Bhadla-III) towards compensation for Change in Law event post reconciliation and offered to make payment of the said amounts on annuity basis spread over a period of 13 years at the annuity rate of 10.41% per annum, subject to final outcome of the Petition No. 536/MP/2020. On 11.01.2021, the Petitioner submitted the requisite undertakings to SECI for release of the reconciled amount of compensation. However, SECI has not released the payment till date.
66. The Petitioner has further submitted that it even invoked the extraordinary writ jurisdiction of the Hon'ble High Court of Delhi by filing W.P.(C) No. 2363 of 2021, *inter alia* seeking a

writ/ order/ direction in the nature of mandamus or any other writ in the nature thereof directing SECI to make payment of the admitted reconciled amounts to the Petitioner in terms of its letter dated 22.12.2020, subject to the outcome of the present Change in Law Petition and the Petition No. 536/MP/2020. On 22.02.2021, the Hon'ble High Court of Delhi vide its order in W.P. (C) No. 2363 of 2021 disposed the writ petition by directing the Commission to take up the matter for consideration and dispose of the present petition expeditiously. The Petitioner has submitted that imposition of Safeguard Duty qualifies as 'Change in Law' under the PPAs and entitles the Petitioner to relief under Article 12 of the PPAs and clause 5.7 of the Bidding Guidelines. Further, SECI may be directed to release the reconciled amount subject to the outcome of Petition No. 536/MP/2020 filed by SECI for approval of annuity methodology including annuity rate.

67. *Per contra*, SECI has submitted that the safeguard duty paid is to be included in the capital cost and amounts to additional capitalization. The additional capitalization has to be served over life of the PPA, as in the case of servicing the capital cost on plant, machinery etc. Further, it has also written letters dated 08.02.2021 and 09.03.2021 to UPPCL, inter-alia, requesting UPPCL to make payment of the reconciled Safeguard Duty claims of the Petitioner. UPPCL is yet to respond to the reconciliation given by SECI to UPPCL vide its letter dated 22.12.2020 in respect of the Safeguard Duty claims of the Petitioner. SECI has further submitted that the Commission vide its order dated 03.02.2020 in Petition No.356/MP/2018 and Petition No.51/MP/2019 in the matter of *Azure Power India Limited – v- Solar Energy Corporation of India Limited* and connected Petition, inter-alia, decided on the payment in respect of the claim of Safeguard Duty. Further, the aspect of cut-off date with respect to Safeguard Duty has already been decided by the Commission in the order dated 04.10.2019 passed in Petition No. 14/MP/2019 and connected Petitions in the matter of *ReNew Solar Power Private Limited –v- Solar Energy Corporation of India Limited and Others*. However, the Commission may clarify the cut-off date with regard to liability of payment on account of impact of safeguard duty on procurement of modules, panels for the present matter. Further, the Commission may issue effective directions to UPPCL to make payment towards the evaluated claims of the Safeguard Duty payable by SECI to the Petitioner, on a back to back basis under the PSA in a time bound manner.

68. Article 12 of the PPAs executed on 27.04.2018 stipulates as below:

“12 ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of this Agreement. For the purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid, the date such law comes into existence shall be considered as effective date for the same;*

but shall not include (i) any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

12.2.1. The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

69. Vide the Safeguard Duty Notification, the Central Government imposed safeguard duty as per the following rates on the import of “*Solar Cells whether or not assembled in modules or panels*”:
- a) 25% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2018 to 29th July 2019;
 - b) 20% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2019 to 29th January 2020;
 - c) 15% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th January 2020 to 29th July 2020.
70. The Petitioner had submitted the bid on 05.12.2017 and the same was accepted and crystallised after e-reverse auction held on 21.12.2017. SECI has issued separate Letters of Intent on 28.03.2018 and the PPAs were executed on 27.04.2018. As per the PPAs, SCoD of the Solar Projects was 27.04.2019 which was subsequently extended by SECI on the request of the Petitioner viz. 18.02.2020 for Bhadla-I, 29.02.2020 for Bhadla-II and 27.10.2019 for Bhadla-III. The Safeguard Duty Notification was promulgated on 30.07.2018 i.e. after the acceptance of the bid submitted by the Petitioner. Therefore, the imposition of Safeguard Duty qualifies as ‘Change in Law’ under the PPAs and entitles the Petitioner to relief under Article 12 of the PPAs.
71. The Petitioner had made available to the Respondents, all relevant documents for reconciliation of its claim for compensation of Rs. 139,05,19,902/- payable by SECI towards expenditure incurred by the Petitioner due to imposition of SGD. On 22.12.2020, SECI confirmed the amounts claimed by the Petitioner (i.e., Rs. 50,45,20,321/- for Bhadla-I, Rs. 49,27,06,488/- for Bhadla-II, and Rs. 39,32,93,093/- for Bhadla-III) towards compensation for Change in Law event post reconciliation and offered to make payment of the said amounts on annuity basis spread over a period of 13 years at the annuity rate of 10.41% per annum, subject to final outcome of the Petition No. 536/MP/2020. On 11.01.2021, the Petitioner submitted the requisite undertakings to SECI for release of the reconciled amount of compensation. However, SECI has not released the payment till date.

72. As per Record of Proceedings dated 26.03.2021, SECI has admitted that “*there is no dispute over the claimed amount. However, UPPCL has not yet confirmed the reconciliation of the Petitioner’s claims.*” The Commission also notes that during hearing of the Petition on 26.03.2021, none were present on behalf of UPPCL despite the notice. Further, the Petitioner has conveyed its acceptance to the annuity rate of 10.41% as suggested by SECI as an interim measure subject to the outcome of Petition No. 536/MP/2020. SECI has also submitted that the Commission may pass an appropriate order in the matter subject to the outcome of Petition No. 536/MP/2020 filed by SECI whereby SECI has sought approval of annuity methodology including annuity rate.
73. We, therefore, notice that there is no dispute as regards amount payable. The only issues that remain are the contention of SECI that UPPCL has not confirmed to the reconciliation amount and the rate of annuity payment. Rate of annuity payment is subject matter of Petition No. 536/MP/2020 and hence is not being dealt with in this petition. Accordingly, the Commission directs SECI to pay to the Petitioner the reconciled amount of compensation on account of Change in Law on annuity basis, subject to the outcome of Petition No. 536/MP/2020. The compensation to be paid to the Petitioner is not conditional upon the payment to be made by the Respondent UPPCL to Respondent SECI. However, the Respondent SECI is eligible to claim the same from the Respondent UPPCL on ‘back to back’ basis and the Commission directs the Respondent UPPCL to expeditiously settle the claims in term of the PSA. The first instalment of the claim shall be paid within sixty days of the date of this Order failing which it will attract late payment surcharge as provided under PPAs/ PSA.
74. Another issue raised by the Petitioner is that Article 12.2.2 of the PPAs along with Clause 5.7 of the Bidding Guidelines, empowers the Commission to grant relief beyond one-time compensation/ adjustment of tariff and is inclusive of the power to grant carrying cost so that the relief is an effective relief. If carrying cost is denied, then mere compensation after lapse of time will have diminished value and severely affect the economic position of the Petitioner. It has further submitted that although there is no concept of 'return on equity' and

'interest on working capital' in a competitively bid tariff, the increase in costs due to change in law events has an indirect bearing on the two and the same may be allowed.

75. We have considered the submission of the Petitioner. Clause 5 of the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” dated 03.08.2017 stipulates as below:

5.7. CHANGE IN LAW

5.7.1. In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

5.7.2. In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.

76. Article 12 of the PPAs executed on 27.04.2018 stipulates as below:

“Relief for Change in Law

12.2.1. The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2. The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

77. The issue of carrying cost has been dealt by APTEL vide judgement dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited v. Central Electricity Regulatory Commission and Ors.*, wherein it was held that since PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable.

The relevant extract of the Judgment dated 13.04.2018 reads as under:

“ISSUE NO.3: DENIAL OF CARRYING COST

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of ‘restitution’ i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon’ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.”

78. The judgment of the Tribunal dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited v. Central Electricity Regulatory Commission and Ors.*, was challenged before the Hon’ble Supreme Court wherein the Hon’ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No.5865 of 2018 with Civil Appeal No. 6190 of 2018 (Uttar Haryana Bijli Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. &Ors.) held as under:

“10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”

.....

16.....There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.”

79. We note that the PPAs in the instant matter do not have restitution provisions. Therefore, in view of above judgements of APTEL and Hon’ble Supreme Court, the claim regarding ‘carrying cost’ is not admissible.
80. The Commission further observes that since the PPAs do not have a provision for separate ‘Interest on Working Capital’/ ‘Return of Equity’ as the PPAs have been signed consequent upon a competitively bid process, these claims are also not admissible.
81. SECI has requested to clarify the cut-off date with regard to liability of payment on account of impact of Safeguard Duty on procurement of modules and panels. In this regard, the relevant provisions of the PPAs stipulate as under:

“ARTICLE 1

Commissioning: shall have the meaning ascribed thereto in Article 5 of this Agreement;

Commercial Operation Date (COD): Commercial Operation date (COD) shall mean the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be;

Capacity Utilisation Factor" or "CUF": shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time. However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity. Contracted Capacity: shall mean 100 MW (AC) contracted with SECI for supply by the SPD to SECI at the Delivery Point from the Solar Power Project;

ARTICLE 4

4.4. Right to Contracted Capacity & Energy

4.4.1 SECI, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond 298.9206 Million kWh (MU). If for any Contract Year, it is found that the SPD has not been able to generate minimum energy

of 230.9841 Million kWh (MU) till the end of 10 years from the COD and 217.3968 Million kWh (MU) for the rest of the term of the Agreement, on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make SPD liable to pay the compensation provided in the PSA as payable to Buying Utilities and shall duly pay such compensation to SECI to enable SECI to remit the amount to Buying Utilities. This will, however be relaxable by SECI to the extent of grid non-availability for evacuation, which is beyond the control of the developer. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be equal to the compensation payable (including RECs) by the Buying Utilities towards non-meeting of RPOs, if such compensation is ordered by the State Commission. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.

4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF will be purchased by SECI at a tariff as per Article 9.4, provided SECI is able to get any buyer for sale of such excess generation. While the SPD would be free to install DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than SECI (unless refused by SECI). However, in case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency.

Any energy produced and flowing into the grid before CoD shall not be at the cost of SECI under this scheme and the SPD will be free to make short-term sale to any organisation or individual. SECI may agree to buy this power as a trader if they find it viable outside this scheme.”

Article 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

...

5.1.5 The SPD shall commission the Project as detailed in "Schedule 6: Commissioning Procedure" within twelve (12) Months of the Effective Date.

SCHEDULE 6: COMMISSIONING PROCEDURE:

- Capacity of Solar PV Projects:
 - i) Maximum AC Capacity at the delivery point shall be allowed as described below:

Sr. No.	Solar PV Project	Minimum DC Arrays Capacity	Minimum Rated Inverter	Maximum AC Capacity Limit
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	<i>Capacity Bid</i>	<i>to be installed</i>	<i>Capacity*</i>	<i>Delivery point</i>
1.	10 MW	10 MW	10 MW	10 MW
2.	20 MW	20 MW	20 MW	20 MW
3.	30 MW	30 MW	30 MW	30 MW
4.	40 MW	40 MW	40 MW	40 MW
5.	50 MW	50 MW	50 MW	50 MW

**In case the rated inverter capacity is mentioned in kV A, the IEC test certificate declaring the power factor of the Inverter/PCU at rated power has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW.*

- ii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per Article 4.4 "Right to Contracted Capacity & Energy" of the PPA is complied.*
- iii) For commissioning of the Project, capacity of DC arrays installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity be installed not less than the proposed part commissioning capacity.*
- iv) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period may not be considered under PPA."*

82. The Commission notes that commissioning of the projects as defined in Article 1 read with Article 4, Article 5 and Schedule 6 of the PPAs implies that all the equipment as per rated project capacity has been installed and energy has flown into the grid. Further, the liability of the Respondents for payment of power purchase from the Petitioners starts from the Commercial Operation Date (COD). As per definition of Commercial Operation Date (COD) provided in Article 1 of the PPAs, COD shall mean the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project, as the case may be. Accordingly, the Commission holds that the liability of payment on account of impact of GST on procurement of Solar PV panels and associated equipment by the Petitioners shall lie with the Respondent till the Commercial Operation Date (COD) only for the contracted capacity and energy as per Article 4.4 of the PPAs. The Commission is also of the view that there has to be a clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services.

83. In view of the above, the Petition No. 181/MP/2020 along with IA 14 of 2021 stands disposed of in terms of the above discussion and findings

Sd/-

पी. के. सिंह
सदस्य

Sd/-

अरुण गोयल
सदस्य

Sd/-

आई. एस. झा
सदस्य

Sd/-

पी. के. पुजारी
अध्यक्ष